DOWNEY
LAW GROUP LLC

Lawyer Professionalism and Ethics

March 2026

Connectivity/Technical Issues

Audio Issues – If you have audio issues on computer, please try accessing by phone at

(701) 801-6121

****No Access Code Required****

If problems persist, contact Paige Tungate at ptungate@DowneyLawGroup.com

Watch the slides at https://join.freeconferencecall.com/downeycle

Download the slides at http://www.downeyethicscle.com/

Questions – Please submit questions during the program through CHAT or during or after the program by emailing Paige Tungate at ptungate@DowneyLawGroup.com

DOWNEY LAW GROUP LLC

CLE Information

- *Kansas Credit* – If you are seeking Kansas credit, you will need to enter the two Attendance Verification Words and your Kansas Bar information into the Program Survey
  - Please complete the Survey ***this week***, so we can ensure you receive proper credit

- *Certificate of Completion* – Available also through the Program Survey

- Three ways to access Program Survey:
  1. Link available in the CHAT (right now)
  2. Link at the end of the slides (here or at www.DowneyEthicsCLE.com)
  3. Link sent to you in an email within 30 minutes of program ending

DOWNEY LAW GROUP LLC

https://www.surveymonkey.com/r/profess0326

DOWNEY
LAW GROUP LLC

Note

Quotations from precedent in this webinar have sometimes been modified, including cutting text and adding line breaks.

DOWNEY LAW GROUP LLC

"You can never get ahead by trying to get even."

- Zig Zigler

DOWNEY
LAW GROUP LLC

2024 Illinois Commission on Professionalism Study on Bullying In the Illinois Legal Profession

DOWNEY LAW GROUP LLC

Most lawyers identified the bully as a lawyer external to their organization (33%), a lawyer within their organization in a more senior or high-level position (31%), or a judge (14%).

DOWNEY LAW GROUP LLC

Bullying impacts lawyer productivity, health, and retention

Lawyers who reported being bullied suffered negative professional, emotional, and physical effects as a result of the bullying, including a negative change in emotional well-being (54%), feelings of less productivity at work (39%), and a decline in physical health (20%).

Importantly, bullying was found to increase turnover and drain talent from the profession. Eighteen percent of survey respondents said they had left a job practicing law because of bullying. That means nearly 10,000 lawyers currently practicing in Illinois have left a job due to bullying.

This percentage was higher for female lawyers (28%), those with a disability (28%), and LGBTQ+ lawyers (25%). Twenty-four percent of Black, Hispanic, and multiracial lawyers said they had left a legal job due to bullying.

A key implication of this is that workplaces without appropriate anti-bullying standards, policies, and procedures are more likely to lose women, lawyers of color, LGBTQ+ lawyers, and lawyers with a disability due to bullying.

DOWNEY LAW GROUP LLC

Suggestions for Addressing Bullying

Legal workplaces should develop, implement, and enforce anti-bullying policies. These policies should clearly define bullying, detail concrete and meaningful remedial actions for engaging in bullying (including mandatory training, reprimand, demotion, termination, or other consequences), outline the process for reporting bullying, require an investigation of the allegations and documentation of the results, and prohibit retaliation for reporting. Existing anti-harassment policies that only prohibit harassment based on a protected class are insufficient.

Legal workplaces should conduct training specific to their organization's anti-bullying policies and procedures to equip lawyers with tools to respond, whether they are being targeted by bullying or witnessing it.

Law schools should also offer educational programs and training to law students on bullying prevention.

Courts should enforce anti-bullying standards in courtrooms and litigation activities.

The Illinois Attorney Registration and Disciplinary Commission (ARDC) should continue to review the bullying complaints it receives and, when such complaints show bullying behavior that violates the Illinois Rules of Professional Conduct, recommend appropriate remediation or disciplinary measures to send a strong message against the bullying.

Bar associations should use their resources and reach to advance programs that educate members on the prevalence and impact of bullying in the legal profession.

Lawyers being bullied should respond in the way they feel best safeguards their rights, well-being, and career.

"Things aren't what they used to be and probably never were."

— Will Rogers

DOWNEY LAW GROUP LLC

Seven Lamps of Advocacy

DOWNEY
LAW GROUP LLC

By Judge Edward Abbott Parry (1923)

1. Lamp of Honesty
2. Lamp of Courage
3. Lamp of Industry
4. Lamp of Wit
5. Lamp of Eloquence
6. Lamp of Judgment
7. Lamp of Fellowship
8. (Lamp of Tact)

DOWNEY LAW GROUP LLC

Oaths of Admission

DOWNEY
LAW GROUP LLC

Missouri Lawyer Oath of Admission

I do solemnly swear that

I will support the Constitution of the United States and the Constitution of the State of Missouri;

That I will maintain the respect due courts of justice, judicial officers and members of my profession and will at all times conduct myself with dignity becoming of an officer of the court in which I appear;

That I will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

That I will at all times conduct myself in accordance with the Rules of Professional Conduct; and,

That I will practice law to the best of my knowledge and ability and with consideration for the defenseless and oppressed.

So help me God.

DOWNEY LAW GROUP LLC

Kansas Oath of Admission

You do solemnly swear or affirm that

you will support and bear true allegiance to the Constitution of the United States and the Constitution of the State of Kansas;

that you will neither delay nor deny the rights of any person through malice, for lucre, or from any unworthy desire;

that you will not knowingly foster or promote, or give your assent to any fraudulent, groundless or unjust suit;

that you will neither do, nor consent to the doing of any falsehood in court; and

that you will discharge your duties as an attorney and counselor of the Supreme Court and all other courts of the State of Kansas with fidelity both to the Court and to your cause, and to the best of your knowledge and ability.

So help you God.

DOWNEY LAW GROUP LLC

Illinois Oath of Admission

I do solemnly swear (or affirm, as the case may be), that

I will support the constitution of the United States and the constitution of the state of Illinois, and

that I will faithfully discharge the duties of the office of attorney and counselor at law to the best of my ability.

DOWNEY LAW GROUP LLC

Preamble to the Rules of Professional Conduct

DOWNEY
LAW GROUP LLC

Lawyer's Responsibilities

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

DOWNEY LAW GROUP LLC

Lawyer's Responsibilities (Continued)

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 4-1.12 and 4-2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 4-8.4.

DOWNEY LAW GROUP LLC

Lawyer's Responsibilities

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

DOWNEY LAW GROUP LLC

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession.

As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education.

In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.

A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance.

All lawyers, therefore, should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.

A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system, and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered.

Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system, and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living.

The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise.

Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules.

These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing.

Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement.

This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

DOWNEY LAW GROUP LLC

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest that it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

Kansas Bar Association's Pillars of Professionalism

DOWNEY LAW GROUP LLC

Adopted By:

- Kansas Supreme Court
- U.S. District Court, District of Kansas
- U.S. Bankruptcy Court, District of Kansas
- Kansas Association of Defense Counsel
- Kansas Trial Lawyers Association
- Wichita Bar Association
- Kansas Women Attorneys Association

DOWNEY
LAW GROUP LLC

With Respect to Clients:

1. Respect your clients' goals and counsel them about their duties and responsibilities as participants in the legal process. Treat clients with courtesy, respect, and consideration.

2. Be candid with clients about the reasonable expectations of their matter's results and costs.

3. Encourage clients to act with civility by, for example, granting reasonable accommodations to opponents. Maintaining a courteous relationship with opponents often helps achieve a more favorable outcome. Counsel clients against frivolous positions or delaying tactics, which are unprofessional even if they may not result in sanctions.

4. Counsel clients about the risks and benefits of alternatives before making significant decisions. Act promptly to resolve the matter once the relevant facts have been obtained and a course of action determined.

5. Communicate regularly with clients about developments. Keep them informed about developments, both positive and negative.

DOWNEY LAW GROUP LLC

With Respect to Courts

1. Treat judges and court personnel with courtesy, respect, and consideration.

2. Act with candor, honesty, and fairness toward the court.

3. Counsel clients to behave courteously, respectfully, and with consideration toward judges and court personnel.

4. Accept all rulings, favorable or unfavorable, in a manner that demonstrates respect for the court, even if expressing respectful disagreement with a ruling is necessary to preserve a client's rights.

DOWNEY LAW GROUP LLC

With Respect to Opposing Parties and Counsel

1.Be courteous, respectful, and considerate. If the opposing counsel or party behaves unprofessionally, do not reciprocate.

2.Respond to communications and inquiries as promptly as possible, both as a matter of courtesy and to resolve disputes expeditiously.

3.Grant scheduling and other procedural courtesies that are reasonably requested whenever possible without prejudicing your client's interests.

4.Strive to prevent animosity between opposing parties from infecting the relationship between counsel.

5.Be willing and available to cooperate with opposing parties and counsel in order to attempt to settle disputes without the necessity of judicial involvement whenever possible.

DOWNEY LAW GROUP LLC

With Respect to the Legal Process

1.Focus on the disputed issues to avoid the assertion of extraneous claims and defenses.

2.Frame discovery requests carefully to elicit only the information pertinent to the issues, and frame discovery responses carefully to provide that which is properly requested.

3.Work with your client, opposing counsel, nonparties, and the court to determine whether the need for requested information is proportional to the cost and difficulty of providing it.

4.Maintain proficiency, not only in the subject matter of the representation, but also in the professional responsibility rules that govern lawyers.

5.Be prepared on substantive, procedural, and ethical issues involved in the representation.

DOWNEY LAW GROUP LLC

With Respect to the Profession and the Public

1.Be mindful that, as members of a self-governing profession, lawyers have an obligation to act in a way that does not adversely affect the profession or the system of justice.

2.Be mindful that, as members of the legal profession, lawyers have an obligation to the rule of law and to ensure that the benefits and the burdens of the law are applied equally to all persons.

3.Participate in continuing legal education and legal publications to share best practices for dealing ethically and professionally with all participants in the judicial system.

4.Take opportunities to improve the legal system and profession.

5.Give back to the community through pro bono, civic or charitable involvement, mentoring, or other public service.

6.Defend the profession and the judiciary against unfounded and unreasonable attacks and educate others so that such attacks are minimized or eliminated.

7.Be mindful of how technology could result in unanticipated consequences. A lawyer's comments and actions can be broadcast to a large and potentially unanticipated audience.

8.In all your activities, act in a manner which, if publicized, would reflect well on the legal profession.

DOWNEY LAW GROUP LLC

Standards of Professional Conduct

within the Seventh Federal Judicial Circuit

DOWNEY
LAW GROUP LLC

Preamble

A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling our duty to represent a client vigorously as lawyers, we will be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner.

A judge's conduct should be characterized at all times by courtesy and patience toward all participants. As judges we owe to all participants in a legal proceeding respect, diligence, punctuality, and protection against unjust and improper criticism or attack.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct tends to delay and often to deny justice.

The following standards are designed to encourage us, judges and lawyers, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.

We expect judges and lawyers will make a mutual and firm commitment to these standards. Voluntary adherence is expected as part of a commitment by all participants to improve the administration of justice throughout this Circuit.

These standards shall not be used as a basis for litigation or for sanctions or penalties. Nothing in these standards supersedes or detracts from existing disciplinary codes or alters existing standards of conduct against which lawyer negligence may be determined.

These standards should be reviewed and followed by all judges and lawyers participating in any proceeding, in this Circuit. Copies may be made available to clients to reinforce our obligation to maintain and foster these standards.

Lawyers' Duties to Other Counsel

1. We will practice our profession with a continuing awareness that our role is to advance the legitimate interests of our clients. In our dealings with others we will not reflect the ill feelings of our clients. We will treat all other counsel, parties, and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications.

2. We will not, even when called upon by a client to do so, abuse or indulge in offensive conduct directed to other counsel, parties, or witnesses. We will abstain from disparaging personal remarks or acrimony toward other counsel, parties, or witnesses. We will treat adverse witnesses and parties with fair consideration.

3. We will not encourage or knowingly authorize any person under our control to engage in conduct that would be improper if we were to engage in such conduct.

4. We will not, absent good cause, attribute bad motives or improper conduct to other counsel or bring the profession into disrepute by unfounded accusations of impropriety.

5. We will not seek court sanctions without first conducting a reasonable investigation and unless fully justified by the circumstances and necessary to protect our client's lawful interests.

6. We will adhere to all express promises and to agreements with other counsel, whether oral or in writing, and will adhere in good faith to all agreements implied by the circumstances or local customs.

7. When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. The drafter will provide the opportunity for review of the writing to other counsel. As drafts are exchanged between or among counsel, changes from prior drafts will be identified in the draft or otherwise explicitly brought to the attention of other counsel. We will not include in a draft matters to which there has been no agreement without explicitly advising other counsel in writing of the addition.

8. We will endeavor to confer early with other counsel to assess settlement possibilities. We will not falsely hold out the possibility of settlement as a means to adjourn discovery or to delay trial.

9. In civil actions, we will stipulate to relevant matters if they are undisputed and if no good faith advocacy basis exists for not stipulating.

10. We will not use any form of discovery or discovery scheduling as a means of harassment.
11. We will make good faith efforts to resolve by agreement our objections to matters contained in pleadings and discovery requests and objections.

12. We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.

13. We will not request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.

14. We will consult other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts.

15. We will endeavor to accommodate previously scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars, or other functions that produce good faith calendar conflicts on the part of other counsel. If we have been given an accommodation because of a calendar conflict, we will notify those who have accommodated us as soon as the conflict has been removed.

16. We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings, or conferences are to be canceled or postponed. Early notice avoids unnecessary travel and expense of counsel and may enable the court to use the previously reserved time for other matters.

17. We will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided our clients' legitimate rights will not be materially or adversely affected.

18. We will not cause any default or dismissal to be entered without first notifying opposing counsel, when we know his or her identity.

19. We will take depositions only when actually needed to ascertain facts or information or to perpetuate testimony. We will not take depositions for the purposes of harassment or to increase litigation expenses.

20. We will not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.

21. We will not obstruct questioning during a deposition or object to deposition questions unless necessary under the applicable rules to preserve an objection or privilege for resolution by the court.

22. During depositions we will ask only those questions we reasonably believe are necessary for the prosecution or defense of an action.

23. We will carefully craft document production requests so they are limited to those documents we reasonably believe are necessary for the prosecution or defense of an action. We will not design production requests to place an undue burden or expense on a party.

24. We will respond to document requests reasonably and not strain to interpret the request in an artificially restrictive manner to avoid disclosure of relevant and non-privileged documents. We will not produce documents in a manner designed to hide or obscure the existence of particular documents.

25. We will carefully craft interrogatories so they are limited to those matters we reasonably believe are necessary for the prosecution or defense of an action, and we will not design them to place an expense or undue burden or expense on a party.

26. We will respond to interrogatories reasonably and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information.

27. We will base our discovery objections on a good faith belief in their merit and will not object solely for the purpose of withholding or delaying the disclosure of relevant information.

28. When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order that accurately and completely reflects the court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the court.

29. We will not ascribe a position to another counsel that counsel has not taken or otherwise seek to create an unjustified inference based on counsel's statements or conduct.

30. Unless specifically permitted or invited by the court, we will not send copies of correspondence between counsel to the court.

Lawyers' Duties to the Court

1.We will speak and write civilly and respectfully in all communications with the court.

2. We will be punctual and prepared for all court appearances so that all hearings, conferences, and trials may commence on time; if delayed, we will notify the court and counsel, if possible.

3. We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.

4. We will not engage in any conduct that brings disorder or disruption to the courtroom. We will advise our clients and witnesses appearing in court of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

5. We will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities in any oral or written communication to the court.

6. We will not write letters to the court in connection with a pending action, unless invited or permitted by the court.

7. Before dates for hearings or trials are set, or if that is not feasible, immediately after such date has been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court of any likely problems.

8. We will act and speak civilly to court marshals, clerks, court reporters, secretaries, and law clerks with an awareness that they, too, are an integral part of the judicial system.

Courts' Duties to Lawyers

1. We will be courteous, respectful, and civil to lawyers, parties, and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and the authority to insure that all litigation proceedings are conducted in a civil manner.

2. We will not employ hostile, demeaning, or humiliating words in opinions or in written or oral communications with lawyers, parties, or witnesses.

3. We will be punctual in convening all hearings, meetings, and conferences; if delayed, we will notify counsel, if possible.

4. In scheduling all hearings, meetings and conferences we will be considerate of time schedules of lawyers, parties, and witnesses.

5. We will make all reasonable efforts to decide promptly all matters presented to us for decision.

6. We will give the issues in controversy deliberate, impartial, and studied analysis and consideration.

7. While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.

8. We recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.

9. We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which a lawyer represents.

10. We will do our best to insure that court personnel act civilly toward lawyers, parties, and witnesses.

11. We will not adopt procedures that needlessly increase litigation expense.
12. We will bring to lawyers' attention uncivil conduct which we observe.

Judges' Duties to Each Other

1. We will be courteous, respectful, and civil in opinions, ever mindful that a position articulated by another judge is the result of that judge's earnest effort to interpret the law and the facts correctly.

2. In all written and oral communications, we will abstain from disparaging personal remarks or criticisms, or sarcastic or demeaning comments about another judge.

3. We will endeavor to work with other judges in an effort to foster a spirit of cooperation in our mutual goal of enhancing the administration of justice.

DOWNEY LAW GROUP LLC

Rules Affecting Professionalism and Civility

DOWNEY LAW GROUP LLC

Rule 4-1.3 cmt [1]

A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client…

The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

DOWNEY LAW GROUP LLC

Rule 4-3.1

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law.

A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

DOWNEY LAW GROUP LLC

Rule 4-3.2

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

DOWNEY LAW GROUP LLC

Rule 4-3.3(a)

A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

DOWNEY LAW GROUP LLC

Rule 4-4.4

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronic stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

DOWNEY LAW GROUP LLC

Cases and Scenarios Regarding Professionalism

DOWNEY LAW GROUP LLC

"Stop Training Lawyers to Be Jerks" -- Jeena Cho

When I was a young lawyer, I was invited to sit in on a deposition with one of the managing partners at the firm. This was my first deposition, and one of my first experiences coming face to face with an adversary. When I got to the conference room, I asked opposing counsel and his client if they wanted anything to drink and if they were comfortable. I don't recall if they asked for anything, but what I do remember is what happened after the deposition. The managing lawyer pulled me aside and told me never to do that again. It was not my job to offer water or make the opposing side comfortable and in fact, it was my job to do the opposite. To make them as uncomfortable as possible.

This was just one example of the mentoring and advice I received from this partner, but it tainted the way I practiced law for a long time. His tactic was to be the most aggressive man in the room, to be the most boisterous and to never give an inch. I tried my best to mimic his tactics. I wanted to be tough. I wanted to win. I thought if I just followed his advice, I'd be just as successful as he was. But I wasn't.

Suggestions

- Lead with kindness
  - Even though harsh tactics may work . . .
- Don't wear other people's suits
  - Find and use your own style
- Be a good human

DOWNEY LAW GROUP LLC

Redwood v. Dobson (7th Cir. 2007)

"This is a grudge match."

Dispute between criminal defense lawyer and former client.

Client had called lawyer "shoe-shine boy"

Resulted in various lawsuits, including this federal lawsuit in which the plaintiff (former client) maintained his religion "leads him to 'teach truth and righteousness to all persons, including defendant Harvey Welch,' a curious euphemism for personal insults "

DOWNEY LAW GROUP LLC

"A profusion of motions and cross-motions for sanctions--and the conduct underlying some of these motions--demonstrates the extent to which counsel have allowed personal distaste to displace dispassionate legal analysis. Most depositions are taken without judicial supervision. Witnesses often want to avoid giving answers, and questioning may probe sensitive or emotionally fraught subjects, so unless counsel maintain professional detachment decorum can break down. That happened here; the results were ugly."

DOWNEY LAW GROUP LLC

Danner's conduct of this deposition was shameful--not as bad as the insult-riddled performance by Joe Jamail that incensed the Supreme Court of Delaware, see *Paramount Communications Inc. v. QVC Network Inc*., 637 A.2d 34, 52-57 (Del. 1994), but far below the standards to which lawyers must adhere. Gerstein, Webber, and Klaus were goaded, but their responses--feigned inability to remember, purported ignorance of ordinary words (the "consult" episode was not the only one), and instructions not to respond that neither shielded a privilege nor supplied time to apply for a protective order--were unprofessional and violated the Federal Rules of Civil Procedure as well as the ethical rules that govern legal practice.

At one point, after Jude Redwood said that, because this was a deposition rather than a trial, Danner was entitled to fish for evidence whether or not the answers would be admissible, Klaus replied: "[T]his is not a discovery deposition. There's no such distinction or dichotomy under the federal rules. Everything that is asked here must meet the standard of the federal rules of evidence." Klaus either did not know, or did not care, that discovery may be used to elicit information that will lead to relevant evidence; each question and answer need not be one that could be one that would itself be proper at trial. But Danner's questions had ventured so far beyond the pale that overstatement on the other side was inevitable.

When the Redwoods sought sanctions in the district court, the judge declared that everyone had behaved badly and that, because Danner was the greater offender, no sanctions would be appropriate. The district judge remarked that it was "ludicrous" for the Redwoods to argue that lawyers may not instruct witnesses not to answer. Given Rule 30(d)(1), however, the Redwoods had (and have) a meritorious position on this issue.

Mutual enmity does not excuse the breakdown of decorum that occurred at Gerstein's deposition. Instead of declaring a pox on both houses, the district court should have used its authority to maintain standards of civility and professionalism. It is precisely when animosity runs high that playing by the rules is vital. Rules of legal procedure are designed to defuse, or at least channel into set forms, the heated feelings that accompany much litigation. Because depositions take place in law offices rather than courtrooms, adherence to professional standards is vital, for the judge has no direct means of control.

Non-Monetary Sanctions

Sanctions are in order, but they need not be monetary. See Fed. R. Civ. P. 30(d)(3), 37(a)(4), (b)(2). Because the arguments pro and con have been fully ventilated in this court, and none of the attorneys has asked for a hearing under Fed. R. App. P. 46(c), we see no need to drag out this controversy with a remand.

Attorneys Danner, Gerstein, and Webber are censured for conduct unbecoming a member of the bar; attorney Klaus is admonished. (We differentiate in this way because a censure is the more opprobrious label, *see In re Charges of Judicial Misconduct*, 404 F.3d 688, 695-96 (2d Cir. 2005), and Klaus's misconduct is substantially less serious than that of the other lawyers.)

Any repetition of this performance, in any court within this circuit, will lead to sterner sanctions, including suspension or disbarment.

DOWNEY LAW GROUP LLC

"Motions to Strike"

Each of the motions to strike was indeed frivolous, for the reasons given in *Custom Vehicles, Inc. v. Forest River, Inc.*, 464 F.3d 725 (2006) (Easterbrook, J., in chambers).

The Federal Rules of Appellate Procedure provide a means to contest the accuracy of the other side's statement of facts: that means is a brief (or reply brief, if the contested statement appears in the appellee's brief), not a motion to strike.

Motions to strike sentences or sections out of briefs waste everyone's time. They go to a motions panel, which does not know (and cannot efficiently learn) which statements are accurate depictions of the record and, if erroneous, whether the error is legally material.

If the motions panel defers decision to the hearing on the merits, as was done here, then the motion does nothing except increase the amount of reading the merits panel must do, effectively giving each side argument on top of the word limit set by Fed. R. App. P. 32. Motions to strike words, sentences, or sections out of briefs serve no purpose except to aggravate the opponent--and though that may have been the goal here, this goal is not one the judicial system will help any litigant achieve.

Motions to strike disserve the interest of judicial economy. The aggravation comes at an unacceptable cost in judicial time.

Brave Law Firm LLC v. Truck Accident Lawyers Group (D. Kan. 2019)

The issue of the identity of non-parties to this suit (i.e., the names of the parties to the underlying settlement) was before the court in plaintiff's motion to compel production of the underlying settlement agreement. Defendants argued it was particularly important to protect the confidential information of non-parties. The court agreed, and although the court ordered the settlement agreement produced to plaintiff, the court expressly determined that the information defendants sought to protect would be protected by a simultaneously entered protective order . . . . The court thus contemplated the identity of the parties to the underlying settlement would be protected.

The court will not permit plaintiff to make an end-run around its orders. Allowing a party to use confidential information subject to a protective order to locate and disclose public documents that would reveal the confidential information would defeat the very purpose of the protective order.19 Defendants' motion is therefore granted. Plaintiff is hereby prohibited from directly or indirectly linking the publicly filed documents obtained from the underlying lawsuit to the present case in any statements he makes outside the record in this case.

DOWNEY LAW GROUP LLC

In reflecting upon the above motions, the court is again struck by the sharp practices taken by counsel on both sides of this case.

During the scheduling conference conducted early in this case, the undersigned expressed his view that this bitter dispute between lawyers had very little jury appeal (or any appeal to the casual bystander).

The issues subsequently raised in this case cast the parties in an even paler light.

Quite simply, the level of civility and professionalism the court would expect from counsel of record is wholly lacking. The court urges counsel to change course sooner, rather than later.

United States ex rel. Baltazar v. Warden (N.D. Ill. 2014)

A review of Baltazar's citations reveals numerous instances of inappropriate, insulting, and offensive remarks and questions by Attorney Hannafan to Baltazar. For example, Baltazar testified that on June 7, 2007, she discovered billing slips that contained services she did not perform. In response to Attorney Hannafan's questions, Baltazar further testified that she did not ask her colleagues if they performed the additional healthcare services on the billing slips because it was not standard practice. Attorney Hannafan then proceeded to insult Baltazar:

Q: I understand. That wasn't my question. My question was, when you found that there was information contained on the billing slips that didn't belong here, did you ask other practitioners whether they had performed some additional healthcare services for that patient that you weren't aware of? Did you ask them?

A: I did not ask other practitioners.

Q: Pardon me?

A: I did not ask other practitioners.

Q: Well, why not? Why not?

A: Because that wasn't standard practice. It wasn't standard of how a fee slip was filled out.

Q: Isn't that common sense? Did you have any common sense?

MR. FARMER: Objection; argumentative.

By Mr. Hannafan:

Q: Did you have any common sense at that time to just ask somebody else, hey, did you do this because I didn't.

A: Each —

Q: Did you do that?

DOWNEY LAW GROUP LLC

Attorney Hannafan asked Baltazar other disrespectful, sarcastic questions. See (Dep. at 25:18-22) ("Why in the world didn't you do that — in March of 2007? It's inconceivable.") (Dep. at 42:9) ("Are you kidding me?"); (Dep. at 101:19) ("Were they circus clowns?); (Dep. at 148:19) ("You understand English, right?); (Dep. at 156:2-4) ("Didn't you follow her around like a puppy dog during the first couple weeks of your employment?); (Dep. at 240:8-10) ("Can you believe this? Okay. I'm sick of the complaint right now. I will go to something else."); (Dep. at 241:15) ("You are kidding me?);(Dep. at 242:12-13) ("Thank you. It's unbelievable. Well, anyway."); (Dep. at 257:11-13) ("Well, you had a number of conversations with her over the period of four lousy months that you worked there, isn't that right."). Such conduct is obviously not appropriate.

Another complaint about Attorney Hannafan's deposition conduct concerns his repeated questions regarding the effects of the lawsuit on Defendants, their personal finances and happiness, and the validity of the settlement demand:

Q: Do you know that your lawsuit has ruined the lives of Dr. Warden and her family?

MR. FARMER: Objection; lack of foundation.

By Mr. Hannafan: [**15]

Q: Do you know that?

A: I do not know how it has affected her or her family.

Q: Do you think it's been a pleasant experience for them?

MR. FARMER: Objection; calls for speculation; lack of foundation.

THE WITNESS: I don't know how it has affected their family.

By Mr. Hannafan:

Q: Do you think that have been happy . . . by having to defend this lawsuit in which you lied in an amended complaint in federal court?

(Attorney Hannafan also displayed aggressive and threatening behavior toward opposing counsel and Baltazar on a number of occasions. At one point, Attorney Hannafan attempted to intimidate Baltazar by stating, "You are going to have to answer my question sooner or later. You can either answer it now or we can sit here and argue about it." (Dep. at 24:6-8). When Baltazar's counsel objected that a question was argumentative, Attorney Hannafan responded:

. . .

Attorney Hannafan later threatened Baltazar's counsel with Rule 11 sanctions. (Dep. at 50:3-5) (stating "You better think about Rule 11 here, Mr. Farmer, and you better think hard about Rule 11 sanctions. We will get to that later. Not today."). When Attorney Hannafan later asked Baltazar if she quit her job, Baltazar responded that she "ended [her] employment there." Attorney Hannafan threatened Baltazar by saying that a "jury is going to like that — a jury is really going to like that distinction. This case is going to a jury trial — . . . I just want to make sure that you understand whatever you say to me today, a jury is going to hear the same thing again. Do you understand that?" (Dep. at 146:6-15). When Baltazar would not admit that she "quit" her employment with Defendant Advanced Healthcare Associates, Attorney Hannafan repeatedly accused her of "quibbling" with him. (Dep. at 145:16-17) ("Why do you want to quibble with me?"); (Dep. at 145:24) ("Why do you want to quibble with me?"); (Dep. at 149:11) ("— don't quibble with me?"). Attorney Hannafan then declared: "You quit, so let's just get that straight. You can say whatever you want, but you quit." (Dep. at 150:17-19). This conduct, threatening the witness and opposing counsel and arguing with the witness and commenting on her answers, is inappropriate and unprofessional.

The conduct reflected in this record demonstrates good cause to justify the issuance of a protective order under Rules 26(c)(1) and 30(d). When there is a breakdown of decorum at a deposition, a court should use "its authority to maintain standards of civility and professionalism. It is precisely when animosity runs high that playing by the rules is vital . . . . Because depositions take place in law offices rather courtrooms, adherence to professional standards is vital, for the judge has no direct means of control." Redwood v. Dobson, 476 F.3d 462, 469 (7th Cir. 2007).

Accordingly, the Court orders as follows.

A different lawyer than Attorney Hannafan must conduct Baltazar's continued deposition. Attorney Hannafan will not attend Baltazar's continued deposition.

Baltazar's continued deposition shall take place at the federal courthouse in Chicago.

After the discovery stay is lifted, the parties are directed to contact the undersigned's courtroom deputy . . . to make arrangements regarding the exact location for the deposition. The continued deposition of Baltazar is limited to new material not covered in the original deposition.

To eliminate any further inappropriate conduct, all remaining depositions shall be conducted pursuant to the following guidelines in addition to the applicable Federal Rules of Civil Procedure:

(1) Examining counsel shall be courteous, respectful, and civil to all other counsel and witnesses;

(2) Examining counsel shall not interrupt the witness. Counsel shall permit the witness to fully answer before propounding subsequent or follow-up questions;

(3) Examining counsel shall not characterize or comment on any answer given by a witness;

(4) Examining counsel shall not engage in any argument with the witness or opposing counsel. Any objection shall be made on the record and appropriate relief may be sought from the Court; and

5) Examining counsel shall not call a witness a liar. A witness' veracity can be examined without calling the witness a liar.

Irvin v. Palmer (Mo. App. E.D. 2019)

Irvins' counsel had no duty to notify Palmers' counsel of the default proceedings.

The Palmers contend that as part of a lawyer's ethical duty of candor to other lawyers, Irvins' counsel owed the Palmers' counsel a duty to alert him that his clients were in default and that the Irvins' counsel intended to seek a default judgment. The Palmers further contend that the Irvins' counsel acted unprofessionally and unethically in this regard. We disagree.

The Irvins' counsel owed his clients undivided loyalty and the duty to advance their interests. . . .

When the Palmers failed to file a timely answer, Irvins' counsel's pursuit of a default judgment on behalf of the Irvins was certainly "within the bounds of the law" and advanced their interests in this case. And since he was not required under Missouri law to alert the Palmers' counsel or the Palmers because they were in default, the ethical duty of candor to opposing counsel is not implicated. As Judge Rendlen stated in his concurring opinion in *Sprung I*: "It appears that to require an attorney to inform his adversary of a default stands athwart the attorney's duty to zealously represent his client." *Sprung v. Negwer Materials, Inc.*, 727 S.W.2d 883, 893 (Mo. banc 1987) (Rendlen, J., concurring).

We acknowledge the importance of civility, professionalism, and candor among members of the Bar. But ours is an adversarial system. And the boundary of those virtues lies at the point where the client's interests begin to suffer. Simply put, the client's interests may not be sacrificed at the altar of some unwritten rule of "professional courtesy" among the men and women of the Bar. To impose the duty the Palmers suggest would portend an endless number of ethical dilemmas for attorneys when they become aware of a critical mistake made by their opposing counsel—e.g., the running of the statute of limitations, the failure to file a mandatory pleading such as the response to a motion for summary judgment or to a request for admissions.

Just as we would not fault a lawyer for failing to inform an opposing colleague that the statute of limitations was set to expire on the colleague's client's claim, we cannot fault the Irvins' counsel for failing to inform the Palmers he was taking up default proceedings because no such duty exists under the law.

We acknowledge the importance of civility, professionalism, and candor among members of the Bar. But ours is an adversarial system. And the boundary of those virtues lies at the point where the client's interests begin to suffer. Simply put, the client's interests may not be sacrificed at the altar of some unwritten rule of "professional courtesy" among the men and women of the Bar. To impose the duty the Palmers suggest would portend an endless number of ethical dilemmas for attorneys when they become aware of a critical mistake made by their opposing counsel—e.g., the running of the statute of limitations, the failure to file a mandatory pleading such as the response to a motion for summary judgment or to a request for admissions.

Just as we would not fault a lawyer for failing to inform an opposing colleague that the statute of limitations was set to expire on the colleague's client's claim, we cannot fault the Irvins' counsel for failing to inform the Palmers he was taking up default proceedings because no such duty exists under the law.

Cummins v. Heaney (N.D. Ill. 2005)

Cummins was retained to represent two defendants in a California case. *Id.* at P 17. The two clients were referred to Cummins by the law firm of Shefsky & Froelich Ltd., who represented another defendant in the same action. *Id.* Heaney represented the plaintiffs. *Id.* at P 18. The case was set for trial on March 4, 2005.

A week before trial, Cummins' ten year old grandson was diagnosed with a brain tumor. *Id.* at P 20. Upon learning of his grandson's diagnosis, Cummins immediately notified the defendants, opposing counsel and his co-counsel at the Shefsky firm that the emergency might necessitate a short trial continuance. *Id.* Cummins was present with his grandson during emergency testing and surgery and later informed all parties that a continuance was necessary. *Id.* at PP 21-22. The California court granted a two-week continuance. *Id.* at P 23.

Subsequent Email from Heaney

Given Mr. Cummins' history of honesty and integrity, we need an accurate update on the state of his grandson's health, including the grandson's full name, the city and state of his residence, and the name and location of the hospital at which the purported emergency surgery occurred.

DOWNEY LAW GROUP LLC

Response

ABSENT AN IMMEDIATE AND EXPLICIT APOLOGY - AND WE UNDERSCORE IMMEDIATE - BOTH BY E-MAIL AND IN HARD COPY FORM, YOU WILL FIND YOURSELF A DEFENDANT IN A SERIOUS DEFAMATION ACTION. We also await an update on Mr. Clark which we assume will be forthcoming without the need for Court intervention.

(The response was "Grow up.")

Cummins sued Heaney for defamation.

DOWNEY LAW GROUP LLC

"Litigation Privilege"

Cummins asserts Heaney's communication "impugned the integrity of a prominent lawyer and made a mockery of his family tragedy." Reply at 3.

Heaney's June 6, 2005 e-mail was in poor taste. Indeed, the sarcastic tone, hostile bickering and lack of civility of the *entire* e-mail chain between all counsel is disturbing. The court agrees with Cummins that "uncivil and junkyard dog litigation tactics" should not be condoned. *See* Compl. at P 1. However, an attorney's responsibility to practice law with integrity includes giving measured consideration to a claim's merits before filing a lawsuit.

Reactionary filings are inappropriate and waste judicial resources particularly when the law is well-settled that a cause of action does not exist. Because Heaney's communications are clearly subject to an absolute privilege, this case must be dismissed.

Conclusory Matters

Questions – If you have questions after the program, please email them to Paige Tungate at ptungate@DowneyLawGroup.com

Post-Program Survey – A survey will be emailed to you about 30 minutes after this program. Also, here is the survey link:

https://www.surveymonkey.com/r/profess0326

Certificate of Completion – Available through the Post-Program Survey

Kansas Credit – If you are seeking Kansas credit, you need to enter the two Attendance Verification Words and your Kansas information into the Post-Program Survey. *Please complete this information in the survey this week, so we can ensure you receive proper credit*

DOWNEY LAW GROUP LLC

https://www.surveymonkey.com/r/profess0326

DOWNEY
LAW GROUP LLC

Timed Agenda

12:00-05 Introduction

12:05-55 Discussion of the concept of "professionalism" and how it impacts legal ethics

DOWNEY LAW GROUP LLC

Future Programs

March 19 – Thursday at 12:00 Noon CT - **Exceptions to the Duty of Confidentiality**

April 15 - Wednesday at 12:00 Noon CT **- Neurodiversity in the Legal Profession**

April 29 - Wednesday at 12:00 Noon CT - **Trust Accounting Ethics**

www.DowneyEthicsCLE.com

DOWNEY LAW GROUP LLC

New Programs

May 12 – Tuesday at 3:00 PM CT – **Legal Ethics and Multijurisdictional Practice**

May 27 – Wednesday at 12:00 Noon CT – **Legal Ethics, Client Intake, and Engagement Agreements**

June 9 – Tuesday at 3:00 PM CT – **Neurodiversity in the Legal Profession**

June 17 – Wednesday at 12:00 Noon CT – **Legal Ethics Update 2026 – Part II**

June 25 – Thursday at 12:00 Noon CT – **Legal Ethics and Technology 2026**

June 30 – Tuesday at 12:00 Noon CT – **Neurodiversity in the Legal Profession**

June 30 – Tuesday at 3:00 PM CT – **Legal Ethics Update 2026 – Part II**

DOWNEY LAW GROUP LLC

Thank you

DOWNEY
LAW GROUP LLC

Downey Law Group LLC
(314) 961-6644
(844) 961-6644 toll free
info@DowneyLawGroup.com

https://www.surveymonkey.com/r/profess0326

DOWNEY
LAW GROUP LLC